



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2020-0487; FRL-8931-03-R3]

#### **Air Plan Approval; West Virginia; 2020 Amendments to West Virginia's Ambient Air Quality Standards; Correction**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction.

**SUMMARY:** The Environmental Protection Agency (EPA) issued a final rule on September 23, 2021, entitled "Air Plan Approval; West Virginia; 2020 Amendments to West Virginia's Ambient Air Quality Standards." This current action corrects an inadvertent error in the **DATES** section of the final rule by setting an effective date for the state implementation plan (SIP) revision submitted by the State of West Virginia. West Virginia's revision updated the incorporation by reference of EPA's national ambient air quality standards (NAAQS) and the associated monitoring reference and equivalent methods. This correction does not change West Virginia's previously approved incorporation by reference, only the **DATES** section in the preamble removing the request for comments and replacing it with the effective date assigned to it.

**DATES:** This correction is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], and is applicable beginning October 25, 2021.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R03-OAR-2020-0487. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are

available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. **FOR FURTHER INFORMATION CONTACT:** Serena Nichols, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. The telephone number is (215) 814-2053. Ms. Nichols can also be reached via electronic mail at [Nichols.Serena@epa.gov](mailto:Nichols.Serena@epa.gov).

**SUPPLEMENTARY INFORMATION:** On September 23, 2021 (86 FR 52837), EPA published a final rule action announcing our approval of West Virginia's revision updating the incorporation by reference of EPA's NAAQS and the associated monitoring reference and equivalent methods. In the document, we inadvertently opened another comment period instead of setting an effective date for the rule. EPA had previously opened a 30-day public comment period for this action in the notice of proposed rulemaking (NPRM) published on February 9, 2021 (86 FR 8727) and responded to the comments received in response to the NPRM in the September 23<sup>rd</sup> final rule, so the provision of another comment period was an error in EPA's final action. This document corrects the erroneous language. This document has no impact on West Virginia's incorporation by reference of the NAAQS or the Clean Air Act (CAA) requirements applicable to West Virginia, only the effective date.

### **Need for Correction**

As published, the September 23, 2021 final rule opens another comment period instead of setting an effective date.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this rule final without another prior proposal and opportunity for comment because, as explained here and in the explanation above, the change to the rule is a minor correction, it is

noncontroversial in nature, and does not substantively change the requirements of West Virginia's incorporation by reference of the NAAQS. Rather, the change sets the necessary effective date of this previously approved SIP revision. Thus, notice and opportunity for public comment are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

### **Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, approving a correction to the West Virginia SIP revision incorporating by reference the NAAQS that previously appeared in the Federal Register on September 23, 2021 (86 FR 52837), may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

### **Correction**

In the *Federal Register* of September 23, 2021, 86 FR 52837, correct the "DATES" to read: **DATES**: This final rule is effective on October 25, 2021.

Dated: March 8, 2022.

Region III.

Diana Esher,  
Acting Regional Administrator,

